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HB 295

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HB 295 removes certain limitations our state Supreme Court has placed upon our rules of evidence to protect against undue prejudice in criminal cases.

Generally, we allow evidence of prior acts only in very limited circumstances and only for very specific purposes, such as proving the defendant's intent, a lack of mistake or accident, or a common plan between the alleged crime and the prior acts.

The reason for having such limitations on when the prosecution may introduce this type of evidence is that we don't want the person accused of a crime to be put on trial for acts in his or her past. We want the accused to be tried fairly, and only for the crime alleged in the current case.

That's not to say that prior acts are never relevant or useful to a jury; but the current rules of evidence, as established by the Court, recognize those special circumstances where evidence of prior acts is relevant and outweighs possible prejudice against the defendant. Under those circumstances and for those purposes discussed above (to prove intent, a common plan, etc.), current law already allows this type of evidence to be introduced. It is a well crafted balance that preserves the due process rights of the accused while still allowing this type of evidence to be used in very limited cases. HB 295 upends this balance and compromises the due process rights of defendants.

The crimes alleged in these types of cases are reprehensible and inexcusable. But the same reason why we would be tempted to treat these crimes differently and to lower the standard for introducing this evidence are the same reasons why need to be even more vigilant in protecting against undue prejudice.

The case of *State v. Aakre* speaks to why this balance is so important. The Aakre case deals with when it is appropriate for a prosecutor to use evidence of prior acts for the narrow purpose of showing a common plan between the prior acts and the alleged crime. The Court in the Aakre case held that the prosecution could introduce evidence of prior acts to show a common plan, but only if the prosecution met its burden to show that the prior acts were sufficiently related to the alleged crime. This is not an insurmountable burden. The Aakre Court cautioned against removing this burden and removing the current limits that are placed on admitting this type of evidence. The Court states that removing this burden: "... exposes the accused to the very real likelihood that the jury will determine guilt, not on the basis of the State's evidence of the current offense, but, rather, on the basis of the jury's belief that the defendant's past character is an accurate predictor of his present conduct. This, historically, was precisely what Rule 404(b) [the current law] was adopted to prevent."

We urge the committee to preserve this delicate balance, not to carve out for different treatment the very cases that are most susceptible to undue prejudice from the jury, and to vote no on this bill.

Scott Crichton, Executive Director